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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

Estate of RUSSELL A. MORSE, Deceased.

LINDA ROYE,

Petitioner and Respondent,

v.

JAMES WRIGHT et al.,

Objectors and Appellants.

C061003

(Super. Ct. No. PB06069)

Estate of JUNE C. MORSE, Deceased.

LINDA ROYE,

Petitioner and Respondent,

v.

JAMES WRIGHT et al.,

Objectors and Appellants.

C061003

(Super. Ct. No. PB06070)

In this case, we apply two sections of the Probate Code and conclude that the court erred and the matter must be remanded to the probate court.

Probate Code section 1043, subdivision (a), provides that any interested person may appear and make an objection to a pending petition in writing at or before a probate hearing. In addition, such a person may make an oral objection at the hearing. When an oral objection has been made, the probate court then has the discretion either to (1) hear and determine the objection at the hearing, or (2) grant a continuance for the purpose of allowing an objection to be made in writing. (Prob. Code, § 1043, subd. (b).) Probate Code section 1046 provides: "The court shall hear and determine any matter at issue and any response or objection presented, consider evidence presented, and make appropriate orders."

James Wright and Douglas Morse made oral objections to the Administrator's petitions at the hearing to settle the Administrator's final account and report for the Estates of Russell Morse and June Morse. The probate court neither determined their objections at the hearing nor granted a continuance for the objections to be filed. Instead, the court permitted the objections to be filed, but deemed them late and declined to rule on them.

Wright and Douglas Morse appeal from the orders settling the final account and report and for final distribution of the two estates. They contend the probate court failed to adjudicate their objections and denied them due process. We agree the probate court failed to consider timely objections to the petitions. Thus, we vacate the orders settling the two

estates. We do not reach their remaining contentions related to the substance of their objections.

FACTUAL AND PROCEDURAL BACKGROUND

Russell Morse died intestate in June 1996. He was survived by his wife June and his two children, Rochell and Douglas.¹ The sole asset in his estate was a one-third interest in 160 acres of undeveloped grazing land in Yolo County (the property). Russell's interest in the property was valued at \$12,320 at the time of his death. Russell had inherited his interest in the property in 1938; the other owners, in equal shares, were Grace Morse and Charles Simpson. Before Russell's death, Simpson purchased Grace Morse's interest in the property.

In March 2000, June executed a quitclaim deed transferring her interest in the property to Charles Simpson. Simpson's interest in the property was subsequently transferred to James Wright.

June Morse died intestate in March 2003. She was survived by her daughter Rochell and her son Douglas. Her estate was valued at almost \$200,000, consisting of a house in Woodland, bank accounts and personal property.

Rochell Morse filed a petition for letters of administration for the estates of both her parents in 2006. Her brother Douglas objected and they finally agreed to the

¹ For convenience and clarity, and not out of disrespect, we sometimes refer to members of the Morse family by their first names.

appointment of a neutral administrator. That summer, Linda Roye (the Administrator) was appointed Administrator of both estates.

The Administrator filed a petition pursuant to Probate Code section 850 to establish the claim of Russell's estate to an interest in the property. The Administrator alleged the quitclaim deed purporting to transfer June's interest to Simpson was invalid because June had no authority to transfer Russell's interest to anyone. The Administrator requested an order that Wright transfer Russell's interest in the property to the Administrator.

Over a year later in 2008, the Administrator and Wright settled the Probate Code section 850 petition after Douglas assigned his interest in Russell's estate to Wright. The Administrator and Wright stipulated that the quitclaim deed was valid and to transfer a one-ninth interest, the interest June expected to receive after Russell's death (one-third of his one-third interest), in the property to Simpson. The Administrator would distribute Russell's remaining interest in the property: one-third to Rochell, one-third to Wright as assignee of Douglas's interest in Russell's estate, and one-third to Wright as successor to Simpson. Douglas later assigned his interest in June's estate to Wright.

A hearing to settle both estates was scheduled for October 8, 2008. The Administrator's first and final account for Russell's estate indicated the Administrator proposed to distribute Russell's interest in the property, the sole asset of the estate, one-third to Rochell and two-thirds to Wright, in

accordance with the stipulation, subject to the proposal for charging costs of administration to June's estate and to Wright personally. The Administrator's attorneys were entitled to statutory compensation of \$492.80 and extraordinary compensation, for legal representation and advice regarding title to the property, of \$13,357. The Administrator waived her right to statutory and extraordinary compensation. The costs of administration, including attorney compensation, would be paid out of Douglas and Rochell's interest in June's estate and by Wright personally.

The Administrator's first and final account for June's estate indicated the Woodland house had been sold. The Administrator had made a preliminary distribution of \$100,000, \$50,000 each to Rochell and Douglas. In addition, Rochell took some of her mother's personal property. The Administrator proposed to distribute the remaining assets of the estate, after expenses, equally to Rochell and Douglas, subject to the assignment from Douglas to Wright. The Administrator proposed to pay a lien of Paul Cass, formerly attorney for Douglas, in the amount of \$2,345.68. The Administrator and her attorneys were entitled to statutory compensation of \$6,644.58 each. In addition, the Administrator was entitled to extraordinary compensation of \$2,872 for services rendered in connection with sale of the house. The Administrator's attorneys were entitled to extraordinary compensation of \$5,868.25. They waived their right to \$454.25 for services in connection with the preliminary distribution, so the Administrator requested to pay the

attorneys only \$5,414 in extraordinary compensation for their services in regard to sale of the house. The Administrator understood Rochell and Douglas were willing to use their cash in June's estate to pay the expenses in Russell's estate and would collect Wright's share as a condition of the distribution of the property from Russell's estate.

Wright objected to the request for \$13,357 in attorney compensation in Russell's estate as excessive and to the request to charge such costs to Wright or to June's estate. As to June's estate, Douglas objected to the request for extraordinary compensation, paying the Cass lien, and paying costs incurred in Russell's estate. Wright joined in these objections.

At the hearing, the attorney for Wright and Douglas stated these objections orally. The court permitted him to file the written objections, which he did later that day, but considered them late. The court indicated it would sign the Administrator's proposed order in 30 days unless counsel filed a stipulation and order.

No stipulation was filed. The court signed the orders proposed by the Administrator. Each order stated: "There was no opposition to the petition."

Wright and Douglas appeal.

DISCUSSION

Wright and Douglas contend the probate court erred by failing to adjudicate their objections, in dereliction of its duty under Probate Code section 1046. That section provides that a court "shall hear and determine any matter at issue and

any response or objection presented, consider evidence presented, and make appropriate orders." They also argue the court denied them due process by failing to provide an opportunity to be heard and a fundamentally fair decisionmaking process. We agree.

The objections were timely and properly before the court. The minute order for the hearing states: "Attny Klink states his objections to the petition & will file objections today. (Court allows although filed late)[.]" Although the written objections may have been late because they were not filed "at or before the hearing" (Prob. Code, § 1043, subd. (a)), an objection may also be made "orally at the hearing." (Prob. Code, § 1043, subd. (b).) The oral objections were timely.

When an oral objection is made, the court has discretion either to hear and determine the objection at the hearing, or to grant a continuance for the purpose of allowing a response or objection to be made in writing. (Prob. Code, § 1043, subd. (b).) The court did continue the matter until November 14, 2008. The continuance, however, was not to permit the objection to be made in writing; rather, it was to allow the parties to reach a stipulation. The minute order states the court would sign the proposed orders unless the parties reached a stipulation. We cannot construe the court's actions as impliedly overruling the objections at the hearing because each order states there was no opposition to the petition.

The Administrator contends the court properly declined to rule on the objections because the written objections were filed

late and there was no request for a continuance. The Administrator contends the court properly considered the petitions as evidence under Probate Code section 1022 because the matter was uncontested. The Administrator faults Wright and Douglas for not carefully reading the applicable provisions of the Probate Code. It is the Administrator's reading of the code that is amiss. An oral objection at the hearing is sufficient and nothing in the Probate Code requires an interested party to request a continuance in order to have the court determine the merits of a timely oral objection.

The Administrator also contends the probate court had considerable discretion and its orders must be upheld unless that discretion is abused. The court abused its discretion by failing to comply with the law when it failed to "hear and determine" the timely objections. "Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an 'abuse' of discretion. [Citation.]" (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297.)

DISPOSITION

The orders are vacated and the matter is remanded to the probate court to reconsider the merits of the petitions in light of the objections of Wright and Douglas.² Wright and Douglas are

² We express no opinion on the merits of the petitions or the objections.

awarded their costs on appeal. (Cal. Rules of Court, rule
8.278(a)(1) & (a)(2).)

CANTIL-SAKAUYE, J.

We concur:

SCOTLAND, P. J.

BUTZ, J.